

overtime workweeks will be scrutinized to determine whether they are manipulations to evade the overtime requirements of the Act.

(b) Where deductions are made from the stipulated wage of an employee, the regular rate of pay is arrived at on the basis of the stipulated wage before any deductions have been made. Where board, lodging, or other facilities are customarily furnished as addition to a cash wage, the reasonable cost of the facilities to the employer must be considered as part of the employee's regular rate of pay. See *Walling v. Alaska Pacific Consolidated Mining Co.*, 152 F. (2d) 812 (C.A. 9), cert. denied, 327 U.S. 803. Thus, suppose an employee employed at a cash rate of \$2 an hour, whose maximum nonovertime workweek under section 7(a) of the Act is 40 hours, works 44 hours during a particular workweek. If, in addition, he is furnished board, lodging, or other facilities valued at \$16, but whose "reasonable cost" is \$11, the \$11 must be added to his cash straight-time pay of \$88 (2×44 hours) in determining the regular rate of pay on which his overtime compensation is to be calculated. The regular rate then becomes \$2.25 an hour ($[(\$88 + \$11) \div (44 \text{ hours})] = \2.25 an hour). The employee is thus entitled to receive a total of \$103.50 for the week ($(40 \text{ hours} \times \$2.25 = \$90) + (4 \text{ hours} \times \$3.37 \frac{1}{2} = \$13.50)$). In addition to the straight-time pay of \$88 in cash and \$11 in facilities, extra compensation of \$4.50 in cash for the 4 overtime hours must, therefore, be paid by the employer, to meet the requirements of the Act.

PAYMENTS MADE TO PERSONS OTHER
THAN EMPLOYEES

§ 531.38 Amounts deducted for taxes.

Taxes which are assessed against the employee and which are collected by the employer and forwarded to the appropriate governmental agency may be included as "wages" although they do not technically constitute "board, lodging, or other facilities" within the meaning of section 3(m). This principle is applicable to the employee's share of social security and State unemployment insurance taxes, as well as other Federal, State, or local taxes, levies, and assessments. No deduction may be

made for any tax or share of a tax which the law requires to be borne by the employer.

§ 531.39 Payments to third persons pursuant to court order.

(a) Where an employer is legally obliged, as by order of a court of competent and appropriate jurisdiction, to pay a sum for the benefit or credit of the employee to a creditor of the employee, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceeding, deduction from wages of the actual sum so paid is not prohibited: *Provided*, That neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction. In such case, payment to the third person for the benefit and credit of the employee will be considered equivalent, for the purposes of the Act, to payment to the employee.

(b) The amount of any individual's earnings withheld by means of any legal or equitable procedure for the payment of any debt may not exceed the restriction imposed by section 303(a), title III, Restriction on Garnishment, of the Consumer Credit Protection Act (82 Stat. 163, 164; 15 U.S.C. 1671 *et seq.*). The application of title III is discussed in part 870 of this chapter. When the payment to a third person of moneys withheld pursuant to a court order under which the withholdings exceeds that permitted by the CCPA, the excess will not be considered equivalent to payment of wages to the employee for purpose of the Fair Labor Standards Act.

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§ 531.40 Payments to employee's assignee.

(a) Where an employer is directed by a voluntary assignment or order of his employee to pay a sum for the benefit of the employee to a creditor, donee, or other third party, deduction from wages of the actual sum so paid is not prohibited: *Provided*, That neither the employer nor any person acting in his behalf or interest, directly or indirectly, derives any profit or benefit from the transaction. In such case, payment to the third person for the

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benefit and credit of the employee will be considered equivalent, for purposes of the Act, to payment to the employee.

(b) No payment by the employer to a third party will be recognized as a valid payment of compensation required under the Act where it appears that such payment was part of a plan or arrangement to evade or circumvent the requirements of section 3(m) or subpart B of this part. For the protection of both employer and employee it is suggested that full and adequate record of all assignments and orders be kept and preserved and that provisions of the applicable State law with respect to signing, sealing, witnessing, and delivery be observed.

(c) Under the principles stated in paragraphs (a) and (b) of this section, employers have been permitted to treat as payments to employees for purposes of the Act sums paid at the employees' direction to third persons for the following purposes: Sums paid, as authorized by the employee, for the purchase in his behalf of U.S. savings stamps or U.S. savings bonds; union dues paid pursuant to a collective bargaining agreement with bona fide representatives of the employees and as permitted by law; employees' store accounts with merchants wholly independent of the employer; insurance premiums (paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it); voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit directly or indirectly.

PAYMENT OF WAGES TO TIPPED EMPLOYEES

§ 531.50 Statutory provisions with respect to tipped employees.

(a) With respect to tipped employees, section 3(m) provides:

In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that in the case

of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount.

(b) "Tipped employee" is defined in section 3(t) of the Act as follows:

Tipped employee means any employee engaged in an occupation in which he customarily and regularly receives more than \$20 a month in tips.

§ 531.51 Conditions for taking tip credits in making wage payments.

The wage credit permitted on account of tips under section 3(m) may be taken only with respect to wage payments made under the Act to those employees whose occupations in the workweeks for which such payments are made are those of "tipped employees" as defined in section 3(t). Under section 3(t), the occupation of the employee must be one "in which he customarily and regularly receives more than \$20 a month in tips." To determine whether a tip credit may be taken in paying wages to a particular employee it is necessary to know what payments constitute "tips," whether the employee receives "more than \$20 a month" in such payments in the occupation in which he is engaged, and whether in such occupation he receives these payments in such amount "customarily and regularly." The principles applicable to a resolution of these questions are discussed in the following sections.

§ 531.52 General characteristics of "tips."

A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for him. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally he has the right to determine who shall be the recipient of his gratuity. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose